

ITEM NO.49

COURT NO.15

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No. 2227/2024 in W.P.(Crl.) No. 31/2020

[Arising out of impugned final judgment and order dated 18-10-2024 in W.P.(Crl.) No. No. 31/2020 passed by the Supreme Court of India]

NOWHERA SHAIK & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.246190/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.246189/2024-MODIFICATION OF COURT ORDER and IA No.246235/2024-APPLICATION FOR PERMISSION)

Date : 11-11-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Nizam Pasha, Adv.
Mr. Lzafeer Ahmad B. F., AOR
Mr. Sidharth Kaushik, Adv.
Ms. Awstika Das, Adv.

For Respondent(s) Ms. Devina Sehgal, AOR
Mr. Kumar Vaibhaw, Adv.
Mr. Vineet George, Adv.

Mr. Tushar Mehta, SG
Mr. Suryaprakash V. Raju, A.S.G.
Mr. Zoheb Hussain, Adv.
Mr. Kanu Agarwal, Adv.
Ms. Sairica Raju, Adv.
Mr. Yuvraj Sharma, Adv.
Mr. Sughosh Subramanyam, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Arvind Kumar Sharma, AOR

Ms. Akshita Choubey, Adv.
 Ms. Yashvi Sharma, Adv.
 Ms. Aakriti Mishra, Adv.
 Mr. Mrigank Shekhar Mehta, Adv.

Mr. Navin Pahwa, Sr. Adv.
 Mr. Mukesh Kumar, AOR

Mr. Dushyant Dave, Sr. Adv.
 Mr. Aakarshan Aditya, AOR

Mr. Saurabh Kirpal, Sr. Adv.
 Mr. Abhikalp Pratap Singh, AOR

Mr. Shan-e-Ilahi Turkey, Adv.
 Mr. Md. Rashid Sayed, Adv.

Ms. Prerna Singh, Adv.
 Mr. Guntur Pramod Kumar, AOR
 Mr. Dhruv Yadav, Adv.

Mr. Ranjay Kumar Dubey, AOR

**UPON hearing the counsel the Court made the following
 O R D E R**

1 Our order dated 4th November, 2024 reads as under :

- "1 We have heard Mr. Kapil Sibal, the learned senior counsel appearing for the petitioner/applicant, Mr. Venkatesh, the learned counsel appearing for the Enforcement Directorate and Mr. Dushyant Dave, the learned senior counsel appearing for the interveners.
- 2 This is a miscellaneous application filed by the petitioner/applicant in a matter which is already disposed of.
- 3 At the outset, a preliminary objection was raised by Mr. Dushyant Dave, the learned senior counsel, as regards the maintainability of the Miscellaneous Application. Mr. Dave may be right in contending that this miscellaneous application is as good as a review application which is otherwise not

maintainable in law. However, we take notice of the fact that the petitioner has come forward with a proposal. The proposal is to the effect that she has three properties the description of which can be found in paragraph 4 of the Miscellaneous Application. It reads, thus :

- "(I) "Naina Towers", H. No. 8-2-609, Road no. 11, Banjara Hills, Hyderabad, Telangana-500 034, fair market value of Rs. 90,09,33,240/- and Realizable value of Rs. 81,08,39,916/-. This Property is owned by Petitioner Nowhera Shaik. The Original of Sale Deed is with the Petitioner/ Applicant.
- (ii) Heera Foodex, Survey Nos.20/3/ AA/3/1 ,20/5/ AA/3/1 ,20/1,20/2,20/3,20/4,20/5 & 20/6, Hydershahkot (V), Gandipet (M), Ranga Reddy (D), Telangana-500 091 , fair market value of Rs. 120,64,66,730/- and realizable value of Rs. 109,58,20,057/-. The Original of Sale Deed is with the Petitioner/ Applicant.
- (iii) M/s. Heera Retail (Hyd) Pvt. Ltd., Open Slots in Town Survey Nos. 12,13,14 & 15/1, Block-M, Ward No. 13, Tolichowki, Shaikpet (M), Hyderabad, Telangana-500 008, which is around 33,060.15 Sq. Yards having fair market value as on 26.08.2024 of Rs. 753,77,14,200/- and realizable value of Rs. 678,39,42,780/-. The Original of Sale Deed is with the Petitioner/Applicant."

- 4 We enquired with Mr Sibal whether these three properties referred to in paragraph 4 of the application are free of all encumbrances. In other words, whether the petitioner is the lawful owner of these three properties as on today. Mr. Sibal would submit that he would have to take instructions in this regard.
- 5 In such circumstances referred to above, we request Mr Venkatesh, the learned counsel appearing for the Enforcement Directorate to undertake an enquiry as

regards the status of the three properties referred to above. Mr Venkatesh submitted that it would take some time to enquire and file an appropriate report as regards the three properties.

- 6 For the present post this matter on 11th November, 2024 to enable Mr. Venkatesh to seek appropriate instructions in the matter.
- 7 We had granted two weeks time to the petitioner to surrender. The period expires today. For the limited purpose as aforesaid, we extend the time period to surrender upto 12th November, 2024.
- 8 We also direct the petitioner to file appropriate affidavit declaring the status of the three properties more particularly, whether they are free of all encumbrances or not.
- 9 We also direct the State of Telangana to undertake an enquiry and file a report as regards the status of the three properties referred to above. In other words, whether the petitioner is the lawful owner of the three properties and whether any encumbrances have been created on these properties or not."

- 2 Today, when the matter was taken up for further hearing, Mr. Venkatesh, the learned counsel appearing for the Enforcement Directorate has produced the report, as called for by this Court. The report reads thus :

**"REPORT ON BEHALF OF ENFORCEMENT
DIRECTORATE(RESPONDENT NO.4)**

I, Prashant Kumar presently working as Deputy Director, Directorate of Enforcement, Pravartan Bhawan, Hqrs. Office, APJ Abdul Kalam Road, New Delhi - 110011, do hereby solemnly affirm and state as follows:-

1. That I am authorized by the Respondent no. 4 in the aforesaid affidavit and as such, I am fully conversant with the facts and circumstances of the case (as provided by the Zonal Office) and therefore, competent to swear this Affidavit. I say that I have read and understood the contents so mentioned.

2. That the present Report is being filed on behalf of the Enforcement Directorate in light of the Order dated 04.11.2024 passed in M.A. No. 2227/2024 in Writ Petition (Crl.) No. 31 of 2020, wherein this Hon'ble Court had noted that the Petitioner herein had come forward with the proposal that the below mentioned 3 (three) properties may be auctioned and the money which is required at present to refund the investors can be generated.

"(i) Naina Towers, H. No. 8-2-609, Road no. 11, Banjara Hills, Hyderabad, Telangana-500 034, fair market value of Rs. 90,09,33,240/- and Realizable value of Rs. 81,08,39,916/-. This Property is owned by Petitioner Nowhera Shaik. The Original of Sale Deed is with the Petitioner/ Applicant.

(ii) Heera Foodex, Survey Nos.20/3/AA/3/1, 20/5/AA/3/1,20/1,20/2,20/3,20/4,20/5& 20/6, Hydershahkot (V), Gandipet (M), Ranga Reddy (D), Telangana-500 091 , fair market value of Rs. 120,64,66,730/- and realizable value of Rs. 109,58,20,057/-. The Original of Sale Deed is with the Petitioner/ Applicant.

(iii) M/s. Heera Retail (Hyd) Pvt. Ltd., Open Slots in Town Survey Nos. 12,13,14 & 15/1, Block-M, Ward No. 13, Tolichowki, Shaikpet (M), Hyderabad, Telangana-500 008, which is around 33,060.15 Sq. Yards having fair market value as on 26.08.2024 of Rs. 753,77,14,200/- and realizable value of Rs. 678,39,42,780/-. The Original of Sale Deed is with the Petitioner/Applicant."

3. It is submitted that the Enforcement Directorate, Respondent No.4 herein has conducted its survey from the portal of Registration and Stamps Department, Government of Telangana wherein the following details have been found:-

Sl No	Property Description	Ownership	Encumbrance Certificate enclosed as
i.	Naina Towers, H.No. 8-2-609,	Heera Retail	Annexure-1

- | | | |
|--|--|--|
| Road No. 11, (Hyderaba
Banjara Hills, d) Private
Hyderabad, Limited
Telangan - 500034 | represente
d by
Nowhera
Shaik
represente
d by Shaik
Ismail | |
|--|--|--|
- ii. Survey Nos. Heera Annexure -2
30/3/AA/3/1, Foodex
20/5/AA/3/1, 20/1, Pvt. Ltd.
20/2, 20/3, 20/4, And
20/5 & 20/6 Nowhera
Hydershahkot (V), Shaik
Gandipet (M), (Managing
Ranga Reddy (D), Director)
Telagana - 500091
- iii. Open Slots in Town Multiple * Annexure -3
Survey Nos. 12,
13, 14 & 15/1,
Block-M, Ward
No.13, Tolichowki,
Shaikpet (M),
Hyderabad,
Telangana -
500008

*collaborated in Para 6 below

5. *In respect of property at Sl. No. (iii) in the table above, it is submitted that the survey numbers in property at Tolichowki, Shaikpet Village and Mandal, as per attachment done by Respondent Directorate are 41, 174, 177, 178, 180/1, 181, 182 and 211 which are different from the survey numbers (12, 13, 14 & 15/1, Block-M, Ward No. 13, Tolichowki, Shaipet (M) mentioned by her. Further, a demarcation report dated 09.03.2023 was furnished by the Dy. Inspector of Survey, Secunderabad Division on the instructions of the Deputy Director, Survey & Land Records, Hyderabad in view of the directions of the Hon'ble Supreme Court. The said report, inter alia, mentions that "the subject land is falling in T.S. Nos. 12, 13, 14 & 15/1, Block-M, Ward 13 correlated to Survey No. 41, 174 and 181 of Shaipet Village & Tahsil". Hence, it can be seen that*

though the survey numbers have been correlated by the Survey and Land Records Department, Hyderabad, there are certain survey Nos. such as 177, 178, 180/1, 182 and 211 which are missing in the said correlation.

6. *Further, it has also been found that as per the "Statement of Encumbrance", there are multiple owners of the said property (at Sl. No. (iii) of the table above) such as Shaik Nowhera represented by Shaik Ismail, Shaik Ismail, Shaik Imran, Shaik Mubarak Jan, Shaik Abubakar, Shaik Qayum, Heera Retail Hyderabad Pvt. Ltd. Represented by Shaik Nowhera, Heera Retail Hyderabad Pvt. Ltd. Represented by Shaik Nowhera represented by Shaik Ismail, Heera Retail Hyderabad Pvt. Ltd. Represented by Shaik Nowhera represented by Shaik Abdul Rahman, Heera Retail Hyderabad Pvt. Ltd. Represented by Shaik Nowhera represented by Mubarak Jan Shaik."*

True copies of the survey from the portal of Registration and Stamps Department, Government of Telangana is being filed herewith marked as **Annexure R-1**

True copy of the Demarcation Report dated 09.03.2023 is being filed herewith marked as **Annexure R-2**

4. It is further submitted that the respondent herein had also conducted Physical Verification of the aforesaid properties which has revealed the following:-

"i. "Naina Towers", H.No. 8-2-609, Road No. 11, Banjara Hills, Hyderabad, Telangana - 500034:

Physical Verification Report: *The Property is in the form of a commercial building consisting of Ground + Five Floors along with one penthouse on the 6th Floor of the building. At present, all the floors of the building are vacant and no office is functioning at the said premises. No encroachments on the said property was noticed. Verification report and photographs are attached herewith as Annexure*

ii. Survey Nos. 20/3/AA/3/1, 20/5/AA/3/1, 20/1, 20/2, 20/3, 20/4, 20/5 & 20/6, Hydershahkot (V), Gandipet (M), Ranga Reddy (D), Telangana-500 091

Physical Verification Report: *The property is in the form of plot of land and incomplete commercial building having Ground + Four Floors constructed on*

part of the same. No encroachment on the said property was noticed. Verification report and photographs are attached herewith as Annexure -

iii. Open Slots in Town Survey Nos. 12, 13, 14 & 15/1, Block-M, Ward No. 13, Tolichowki, Shaikpet (M), Hyderabad, Telangana - 500008:

Physical Verification Report:- *The said property is divided in several parts of Survey Nos. 12, 13, 14 & 15/1 at Toli Chowki, Shaikpet Village and out of total area of 33060 Sq. Yds., several temporary/permanent structures were found to be constructed in around 8218.56 Sq. Yds. Detailed verification report and photographs are attached herewith as Annexure"*

True copies of the physical verification report conducted by the answering respondent is being annexed herewith marked as **Annexure R-3**

5. It is further submitted that the Petitioner herein had also made representations in the past regarding illegal encroachments on the said **property No.iii** which were duly forwarded to the jurisdictional police for taking necessary action.

True copy of the letter dated 17.10.2024 forwarded to the jurisdictional police are attached herewith marked as **Annexure R-4**

6. It is pertinent to note that the Petitioner herein was fully aware of the illegal encroachment and legal disputes involved in the said property which is being mentioned at **Sl. No.iii**, viz., M/s. Heera Retail (Hyd) Pvt. Ltd., Open Slots in Town Survey Nos. 12,13,14 & 15/1, Block-M, Ward No. 13, Tolichowki, Shaikpet (M), Hyderabad, Telangana-500 008, which is around 33,060.15 Sq. Yards having being submitted stating its fair market value as on 26.08.2024 is of Rs. 753,77,14,200/- and realizable value is of Rs. 678,39,42,780/- but yet chose to misrepresent the same before this Hon'ble Court.
7. Further, after the physical verification of the said property (**at Sl. No. 7 (iii) above**), a representation dated 07.11.2024 (copy enclosed) has been received from several persons (Syed Riyaz & others) who have claimed to have purchased the said land at Sy. Nos. 41, 174, 177, 178, 180/1, 181, 182 and 211 from Syed Mohammed S/o. Late Nawab Syed Ahmed & Others on

the basis of Decree of declaration and consequent possession vide O.S. No. 896 of 2015 on the file of III Additional Chief Judge, City Civil Court, Hyderabad. The said representation states that a mischievous attempt was made by Nowhera Shaik, Petitioner herein, to claim the subject property by misleading the Hon'ble Supreme Court and that accordingly they approached the Hon'ble Supreme Court by filing I.A. No. 21013 of 2023 in WP (Crl.) No. 31 of 2020 and acknowledging the disputes over the rival claims of various parties, this Hon'ble Court protected their interest by observing that disputes inter se parties with regard to the subject land would be decided by the appropriate forum. Vide the said representation; the said claimants have also acknowledged that their sale deeds with the original owners could not be executed on account of the attachment of the said land by Directorate of Enforcement.

8. It is further submitted that apart from the aforesaid three properties, there are other confirmed attached properties unencumbered and free from encroachment, which can be sold and auctioned in order to realize the amount due to the investors. It is submitted that the Petitioner herein despite being directed and having undertaken to submit the list of such other properties has not done so, till date.
9. Further, during the course of search operations on 03.08.2024 at the premises of Petitioner herein, her relatives & associates as well as office of Heera Group, 12 vehicles were seized u/s 17 of PMLA on the reasonable belief that they are purchased out of proceeds of crime. The present market value of the said vehicles is expected to be more than Rs.2 Crores. The proceedings before the Ld. Adjudicating Authority (PMLA) for confirmation of the said seizure may take a few months while the value of the seized vehicles shall continue to depreciate. It is therefore proposed that a prayer may be made before the Hon'ble Court to direct auction of the said seized vehicles and subsequent deposit of the proceed with SFIO or with the Registrar of the Hon'ble Supreme Court for settlement of investors' claim.
10. The contents of the aforesaid Report are true and correct to the best of my official knowledge and records. No part of it is false and no material has been concealed therefrom."

- 3 The State of Telangana was also directed to file its report. However, due to some difficulties, the State has not been able to file its report. However, a statement is being made by the learned counsel appearing for the State of Telangana that the State has also verified and have confirmed that so far as the first two properties are concerned, they are free from all encumbrances.
- 4 At this stage, Mr. Navin Pahwa, the learned senior counsel appearing for an intervener submitted that his client has a mortgage deed in his favour so far as the first property, i.e., 'Naina Towers' is concerned.
- 5 We are not getting into all these controversies, as aforesaid, at this stage. If any person has any interest in the properties created by any agreement or the like, such person will have to establish his right in accordance with law.
- 6 Today, we go by the statement and the enquiry undertaken by the Enforcement Directorate as well as the State of Tamil Nadu.
- 7 Having regard to the report filed by the Enforcement Directorate, we are now able to say that 'Naina Towers' and 'Heera Foodex, Survey Nos.20/3/AA/3/1 ,20/5/ AA/3/1 ,20/1,20/2,20/3,20/4,20/5 & 20/6, Hydershahkot (V)' under attachment of the Enforcement Directorate are free from all encumbrances. In such circumstances, we direct the Enforcement Directorate to put both the properties to auction in accordance with law. We are informed that this may take about three months' time before the entire proceedings are completed. We permit the Enforcement Directorate to proceed further with issuance of auction

notice in accordance with law after fixing an offset price. The offset price shall be fixed after obtaining report from a Government approved valuer.

- 8 Having regard to what has been stated in paragraph 8 of the report filed by the Enforcement Directorate, we direct the petitioner to furnish full, correct and complete details of the other properties owned by her free from all encumbrances within a period of two weeks from today. Once the information as regards other properties free from all encumbrances is furnished to the Enforcement Directorate, it shall proceed further at the earliest to put those properties also to auction and try to recover maximum amount so that ultimately whatever amount is fetched can be distributed amongst the investors.
- 9 In addition to what we have observed above, we direct the petitioner to deposit an amount of Rs.25,00,00,000/- (Rupees twenty five crore only) within a period of three months from today. This amount shall be deposited directly with the Enforcement Directorate.
- 10 The time period to surrender is extended by a further period of three months from today. The petitioner is directed to surrender both her passports with the Court of the Metropolitan & Sessions Judge-cum-Special Court under PMLA at Nampally, Hyderabad within a period of one week from today.
- 11 We treat this matter as part heard as we have invested substantial time in this matter.
- 12 We do not say anything as regards the third figuring property in the chart for the

present.

13. Post this matter after one month to report further developments or progress as regards the auction proceedings.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(POOJA SHARMA)
COURT MASTER